

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

WILLIAM TONY WIDNER,	:	
	:	
Plaintiff,	:	
	:	Civil Action
v.	:	No. 5:04-cv-341
	:	
WILLIAM DEAN, THEODORE	:	
WADDLE, DORIS WILLMER,	:	
E. CHARLES VICKERY, RICHARD	:	
LITTLE, MARK CHASTAIN,	:	
GUY RITTER, JR., GLORIA	:	
RASTON, and JOHN SWEITZER,	:	
individually,	:	
	:	
Defendants.	:	
	:	

ORDER ON DEFENDANTS' MOTION TO SET ASIDE

This case has been remanded to this Court by the United States Court of Appeals for the Eleventh Circuit for consideration of the Defendants' motion to re-visit and set aside this Court's denial of Defendants' motion for summary judgment. The appeal of the case was stayed on June 7, 2007, to allow Defendants to file their motion under Rule 60(b) of the Federal Rules of Civil Procedure. On November 6, 2007, this Court entered an Order directing the entry of summary judgment in favor of Defendants because Plaintiff's claims were barred by the doctrine of *res judicata*. In entering this Order, this Court was unmindful of the holding in Mahone v. Ray, 326 F.3d 1176, 1180 (11th Cir. 2003), which provides that after a notice of appeal has been filed a District Court has no jurisdiction to grant a Rule 60(b) motion. A District Court may either deny such a motion or indicate to the Court of Appeals that it is inclined to grant the motion so that the Court of Appeals may remand the matter and confer jurisdiction on the District Court to grant the relief requested. The Court of Appeals interpreted the November 6, 2007 Order as a

certification that this Court was inclined to grant the Rule 60(b) motion and has remanded the case for entry of a proper order to that effect. This Court now has jurisdiction over the matter and is authorized to grant the relief that the previous Order purported to grant.

Accordingly, it is hereby ordered that the Court's November 6, 2007 Order (Doc. 82) and the subsequent entry of summary judgment in favor of Defendants (Doc. 83) be **VACATED**. It is further ordered that upon remand of the case, Defendants' motion to set aside (Doc. 80) be **GRANTED** for the reasons set forth in the Court's previous Order and that judgment be re-entered in favor of Defendants as of the date of entry of this Order.

SO ORDERED, this 10th day of January, 2008.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

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